

THE PUBLIC LAND TRUST

I. Introduction: The State's Duty

‘Āina, or land, is at the very core of Kānaka Maoli or Native Hawaiian culture. Indeed, Native Hawaiians trace their ancestry to the ‘āina, to the natural forces of the world, and to kalo, the staple food of the Hawaiian people. All are related in a deep and profound way that is expressed in every aspect of Kānaka Maoli life. The “ceded” lands, the Government and Crown Lands of the Hawaiian Kingdom, held by the State, embody the spiritual and physical connection of the Native Hawaiian people to the land.

The State’s fiduciary duty in relation to these lands, held by the State with significant portions designated as the “public land trust,” is deeply rooted in Hawai‘i law. As the Hawai‘i Supreme Court has stated, State officials are obligated “to use reasonable skill and care in managing the public lands trust” and the State’s conduct should be judged “by the most exacting fiduciary standards.”¹ Thus, the State’s well-established commitment to reconciliation with the Native Hawaiian community includes the preservation of the “ceded” or trust lands to the greatest extent possible, until the unrelinquished claims of the Native Hawaiian community to the trust lands are resolved.

II. Background: A Brief History

In the 1848 Māhele process that led to fee simple title in Hawai‘i, King Kamehameha III set aside the Government Lands for the benefit of the chiefs and people. He reserved the Crown Lands as his own property, providing a source of income and support to the Crown. The Crown Lands, in turn, became a resource for the Native Hawaiian people. After the illegal overthrow of the Hawaiian Kingdom in 1893 and the establishment of the Republic of Hawai‘i in 1894, the Republic claimed the Crown Lands and merged the Government and Crown Lands into the “public lands” through the 1895 Land Act.

In 1898, the Republic of Hawai‘i transferred nearly 1.8 million acres of Government and Crown Lands to the United States pursuant to a Joint Resolution of Annexation passed by the U.S. Congress. In the Joint Resolution, the U.S. recognized the special nature of the Government and Crown Lands, stating that their revenues and proceeds, with certain exceptions, should be used “solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.”² Although both the Joint Resolution and the 1900 Organic Act, which established a government structure for the Territory of Hawai‘i, implicitly recognized the trust nature of the Government and Crown Lands, large tracts of these lands were set aside by the federal government for military and other purposes during the territorial period and continue under federal control today.

The unique status of the Government and Crown Lands, as well as the special relationship between the federal and state governments and Native Hawaiians, has been recognized in multiple ways, including the enactment of the 1921 Hawaiian Homes Commission Act (HHCA).³ The HHCA set aside over 203,500 acres of public land, much of it Crown Lands, to be leased to Native Hawaiians at a nominal fee for ninety-nine years.⁴ In the HHCA, a Native Hawaiian beneficiary was defined as “any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.”⁵

When Hawai‘i became a state in 1959, most of the Government and Crown Lands, including the HHCA trust lands, were transferred to the State of Hawai‘i. The United States, however, retained use and control of almost 375,000 acres of land.⁶ Moreover, under pressure from the federal government, the

new State of Hawai'i leased between 29,400–30,200 acres of the “ceded” public trust lands to the United States for sixty-five years for a dollar for each lease.⁷

III. Applicable Constitutional Provisions, Statutes, Cases, and Rules

A. The Admission Act

The 1959 Admission Act articulates the State's trust responsibility. Section 4 requires the State to adopt the HHCA as a part of its constitution. Section 5(b) provides that “the United States grants to the State of Hawaii . . . the United States' title to all the public lands and other public property . . . within the boundaries of the State of Hawaii, title to which is held by the United States[.]”⁸ Thus, the Admission Act transferred to the State of Hawai'i most of the public lands previously transferred by the Republic of Hawai'i to the United States.

Section 5(f) of the Admission Act also affirms the State of Hawai'i's trust responsibilities:

*The lands granted to the State of Hawaii by subsection (b) . . . shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible[,] for the making of public improvements, and for the provision of lands for public use.*⁹

This section also provides that these lands, proceeds, and income shall be managed and disposed of for one or more of the five trust purposes “in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.” Most significantly, Congress recognized Native Hawaiians, as defined in the HHCA, as beneficiaries of the public land trust.

B. Hawai'i State Constitutional Provisions

Article XII, Section 4, of the Hawai'i Constitution confirms the State's trust responsibilities by providing: “The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution . . . [excluding HHCA lands] . . . shall be held by the State as a public trust for native Hawaiians and the general public.”¹⁰ Furthermore, Article XII, Section 5, of the Constitution establishes the Office of Hawaiian Affairs (OHA) and provides that OHA “shall hold title to all the real and personal property now or hereafter set aside or conveyed to it, which shall be held in trust for native Hawaiians and Hawaiians.”¹¹

Significantly, Article XII, Section 6, of the Constitution requires the OHA Trustees to manage and administer income and proceeds from a variety of sources, including a “pro rata portion” of the public land trust.¹² The Constitution does not define what percentage of the public land trust income and proceeds OHA should receive; that determination was left to the Legislature.

Article XVI, Section 7, of the Constitution also provides that “any trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands patented to the State by the United States or the proceeds and income therefrom, shall be complied with by appropriate legislation. Such legislation shall not diminish or limit the benefits of native Hawaiians under Section 4 of Article XII.”¹³

C. Statutes and Cases

Implementing Art. XII, § 6, of the Constitution – Income and Proceeds to OHA:

In 1980, the Hawai‘i State Legislature passed legislation, codified at Hawai‘i Revised Statutes (HRS) Section 10-13.5, that requires OHA to receive “[t]wenty per cent of all funds derived from the public land trust[.]” Despite this language, the Hawai‘i Supreme Court in the 1987 *Trustees v. Yamasaki* case held that a literal interpretation of HRS Section 10-13.5 “would be at odds with [other] legislative commitments.”¹⁴ The court did not determine what OHA’s share of the public land trust income and proceeds should be, but left the issue for further legislative determination.

In 1990, with support from OHA and the Governor, the Legislature passed Act 304, defining the trust corpus and trust revenues from which OHA’s twenty per cent share would derive.¹⁵ While Act 304 settled whether many categories of receipts would or would not be subject to OHA’s pro rata share, there were still categories of trust revenue that were in dispute between OHA and the State, and OHA again brought suit. In 2001, the Hawai‘i Supreme Court in *OHA v. State* invalidated Act 304 because it appeared to obligate the State to pay airport revenues to OHA, which conflicted with federal law.¹⁶ Although it invalidated Act 304, the court acknowledged that the State’s obligation is firmly established in the State Constitution and concluded, “it is incumbent upon the legislature to enact legislation that gives effect to the rights of native Hawaiians to benefit from the ceded lands trust.”¹⁷

After the *OHA v. State* decision, payments to OHA were suspended and then temporarily reinstated in 2003. Finally, in 2006, the Legislature passed Act 178, which transferred to OHA a one-time payment of \$17.5 million for previous underpayments of trust revenues and established the *interim* revenue to be transferred to OHA from the public land trust as \$15.1 million annually.¹⁸ Act 178 also tasked the Department of Land & Natural Resources (DLNR) with providing an annual accounting of all receipts from lands described in section 5(f) of the Admission Act for the prior fiscal year. Subsequently, Governor’s Executive Order 06-06 set specific procedures for State entities to follow in reporting public land trust revenues.¹⁹

In 2012, OHA and the State reached a settlement to resolve back revenue claims. The settlement, which was approved and enacted as Act 15,²⁰ conveyed ten parcels of mostly waterfront property in Kaka‘ako Makai to OHA. The property is valued at approximately \$200 million, and the conveyance settled all claims for back revenues from the date of OHA’s creation in 1978 through June 30, 2012. Recently, OHA has requested that certain height and use restrictions on some of its Kaka‘ako Makai properties be lifted in order to make the property more viable as an income source, but legislation needed to accomplish those changes has not passed.²¹

Pursuant to Act 178, passed in 2006, OHA continues to receive the *interim* revenue amount of \$15.1 million annually from the public land trust. Attempts to fully implement Art. XII, section 6, of the Constitution and provide OHA with the actual amount that constitutes a pro rata share of the public land trust are ongoing. Using the definition of revenue historically agreed to by OHA and the State, data collected from agency reporting, and an analysis of underreported receipts, the amount of revenue OHA should receive annually is closer to \$35 million, not \$15.1 million. This would also mean that there is significant back revenue due to OHA. In a positive move, in the 2022 legislative session, both the House and the Senate passed S.B. 2021, C.D. 1, which would increase OHA’s annual interim revenue amount to \$21.5 million, appropriate up to \$64 million to OHA, and establish a working group to determine the

pro rata share of income and proceeds due annually to OHA.²² As of this writing, the Governor has neither signed nor vetoed the proposal and there is great hope that he will act positively on the measure.

Inventory of Trust Lands:

Since the late 1970s, there have been a number of efforts to create an accurate inventory of trust lands. In 1981, DLNR completed an initial inventory, listing approximately 1,271,652 acres.²³ DLNR itself conceded that its inventory was not complete and also did not include lands under the jurisdiction of other state agencies.²⁴ In 1982, the Legislative Auditor was directed to complete the inventory of trust lands and to study the legal issues relating to trust land revenues.²⁵ The Legislative Auditor's 1986 final report, while not providing a complete inventory, detailed the numerous problems, such as survey and title search expenses, involved in compiling an accurate and comprehensive inventory. In 1997, the Legislature appropriated funds to convert DLNR's Land Division records into a database to assist in managing all public lands.²⁶ The result was the State Land Information Management System (SLIMS), which became operational in the fall of 2000. SLIMS integrated information about state lands, including the inventory, into one system that identified property and tracked information such as lease renewal dates and lease receipts.²⁷

Recognizing that SLIMS did not include all trust lands and that the trust status of some lands was not clearly delineated, the 2011 Legislature passed Act 54 to further study and clarify the trust status of lands, particularly those to which state agencies other than the DLNR holds title.²⁸ As a result, in 2018, the DLNR launched the Public Land Trust Information System (PLTIS), a web-based inventory of State and County owned lands and encumbrances covering approximately forty agencies.²⁹ The PLTIS allows for "the further study of the Trust Land Status of those lands." The PLTIS indicates that the information from the revenue reports required by Act 178 will be available on the PLTIS, but "the figures reported within the encumbrances will not necessarily match that of the Act 178 reports" because "[g]enerally speaking, the PLTIS looks at current and future data and potential revenue, while [A]ct 178 captures past fiscal activity including actual amounts received."³⁰

Sale, Transfer, or Alienation of Trust Lands:

Until 1993, State and Federal law appeared to allow the sale, transfer, or alienation of trust lands as long as the proceeds were utilized for one or more of the trust purposes. At least one federal court had found a breach of trust in the transfer of submerged lands (which are part of the public land trust) to a private entity without compensation to the State.³¹ The adoption of the Apology Resolution by the U.S. Congress in 1993 and the passage by the State Legislature of analogous legislation, however, led OHA and others to file a lawsuit challenging a pending transfer of public trust lands.

In the Apology Resolution, Congress apologized to the Native Hawaiian people for the overthrow of the Hawaiian Kingdom with the participation of agents and citizens of the United States. Congress also expressed its "commitment to acknowledge the ramifications of the overthrow . . . in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people." Congress specifically recognized that the Government and Crown Lands were taken without the consent of or compensation to the Native Hawaiian people or their sovereign government, and that "the indigenous Hawaiian people never directly relinquished their claims . . . over their national lands to the United States."³²

In a 2008 unanimous opinion, the Hawai'i Supreme Court placed a moratorium on the sale of public trust lands until Native Hawaiian claims to the lands were resolved. In *OHA v. Housing and Community Development Corporation of Hawai'i*, the court reasoned that the Apology Resolution and analogous State laws implicated the State's trust duty to preserve the trust lands until resolution of Native Hawaiian claims. This duty, the court believed, was consistent with the high fiduciary standards required of a trustee.³³

In summing up, the court found it significant that:

Congress, the Hawai'i state legislature, the parties, and the trial court all recognize (1) the cultural importance of the land to native Hawaiians, (2) that the ceded lands were illegally taken from the native Hawaiian monarchy, (3) that future reconciliation between the state and the native Hawaiian people is contemplated, and (4) once any ceded lands are alienated from the public land trust, they will be gone forever.³⁴

In 2009, the United States Supreme Court, in *Hawaii v. OHA*, reversed.³⁵ The Court held that the Apology Resolution was conciliatory and did not substantively alter the State's authority to alienate the public trust lands. The Court also held, however, that while the Hawai'i Supreme Court improperly relied upon the federal Apology Resolution, the case should be sent back to the Hawai'i Supreme Court to determine whether State law alone would support a moratorium.

After the U.S. Supreme Court decision, OHA and three other plaintiffs reached a settlement with the State. Act 176, passed in 2009, affirmed the settlement by restricting the transfer of public land trust 'āina; Act 169, passed in 2011, provided additional safeguards.³⁶ Now, a sale or gift of lands in the public land trust requires a two-thirds majority legislative approval for the permanent alienation of those lands. Act 146, passed in 2014, requires a simple majority approval for an exchange of public lands for private lands.³⁷ Additionally, whether for a sale, gift, or exchange of lands, the relevant State agency must determine whether the lands are part of the public land trust, explain how that determination was made, and provide a detailed summary of any development plans for the parcel. For a sale or gift of land, the agency must hold an informational meeting in the community affected. Finally, OHA must be notified at least three months prior to the legislative session in which the land sale, gift, or exchange will come up for consideration. All of these requirements are set forth in HRS Chap. 191.

In the 2021 State legislative session, H.B. 499 passed over significant objections from the Native Hawaiian community and members of the general public. This bill, which became law as Act 236, allows the BLNR to extend leases on trust lands for commercial use, industrial use, resort use, mixed-use, or government use (excluding the University of Hawai'i and its agencies), for up to an additional 40-years.³⁸ While such extensions would only be allowed where the "lease has not been assigned or transferred within the last ten years" and where the lessee "commits to substantial improvements," one concern is that leasing trust land for 100-plus years, could lead to an expectation by lessees that their control of trust lands will be continued indefinitely. More importantly, these lands would not be available for any true reconciliation effort between the State and the Native Hawaiian community.

The State's Trust Duty:

In 2019, the Hawai'i Supreme Court, in *Ching v. Case*,³⁹ reaffirmed the State's trust duty in relation to the public land trust, reiterating that "our constitution places upon the State duties . . . much like those of a common law trustee, including an obligation to protect and preserve the resources however they are utilized."⁴⁰ Significantly, the court cited not only the Hawai'i constitutional provision on the public land

trust, but also to the constitutional provision on the public trust doctrine, which states, in part, that “[a]ll public natural resources are held in trust by the State for the benefit of the people.”⁴¹ In the *Ching* case, the State had leased 22,900 acres of land at Pōhakuloa, on Hawai‘i Island, to the United States for military purposes for a dollar for 65 years, with the lease set to expire in 2029. The court examined whether the State had been ensuring that the terms of the lease were being met. In upholding the trial court’s determination that the State had breached its trust duties by failing to reasonably monitor or inspect the trust land, the court held that “an essential component of the State’s duty to protect and preserve trust land is an obligation to reasonably monitor a third party’s use of the property . . . this duty exists independent of whether the third party has in fact violated the terms of any agreement governing its use of the land.”⁴² This ruling by the court indicates that it will hold the State to the highest fiduciary standard, which includes the duty to deal impartially “when there is more than one beneficiary, . . . [and] use reasonable skill and care to make trust property productive.”⁴³

The fate of the lands that the State leases to the military is unclear, but in a positive step, Act 93 was signed into law in 2021 requiring the Office of Planning to submit a report to the Legislature containing, among other things: (1) an inventory of lands within the State that are leased to or controlled by the federal government; and (2) any known contaminants or environmental hazards associated with the lands based on past environmental studies.⁴⁴ Act 93 also requires input from relevant state agencies and OHA on remediation and proposed alternative uses, as well as findings and recommendations based on the information gathered.

IV. Practical Application and Impact on Native Hawaiian Culture

As the discussion above shows, significant issues involving the public land trust are relevant for Hawai‘i’s councils, boards, commissions, and lawmakers: the public land trust revenues, the public land trust inventory, the transfer and alienation of “ceded” lands, and ensuring that the State carries out its trust responsibilities in monitoring agreements related to trust lands.

The first practical issue involves the public land trust revenues. OHA currently receives \$15.1 million annually in trust revenue, an *interim* amount set by the Legislature, an amount that is not reflective of a “pro rata share” of the income and proceeds from the public land trust as required by the State Constitution. In 2012, the Legislature approved an agreement to satisfy all claims related to trust revenues for the period from November 7, 1978 to June 30, 2012, by transferring land in Kaka‘ako Makai to OHA. This agreement gave OHA a significant resource for the Hawaiian people and represents an important reconciliation effort between the State and Native Hawaiians over past-due public land trust revenues. Unfortunately, OHA’s ability to develop the Kaka‘ako Makai lands has been hampered by certain height and use limitations.

In fulfilling its trust responsibilities, State entities should make every effort to accurately report revenue from the public land trust as well as obtain the best value for the use of trust land. Only by having the best and most accurate information available can decisionmakers make informed and wise decisions about the “pro rata share” of the public land trust revenues to be transferred to OHA for the benefit of the Native Hawaiian community. As discussed above, the information collected pursuant to Act 178 indicates that the current amount of \$15.1 million received annually by OHA does not meet the “pro rata share” requirement of Article XII, section 6, of the Constitution and HRS section 10-13.5. But in a positive move, S.B. 2021, C.D. 1 (2022), if it becomes law, will be a significant step toward resolving this long-standing issue. The State would then be truly making progress on fulfilling its fiduciary obligation.

Intertwined with the issue of revenue is the concern relating to an accurate inventory of trust lands and resources. The efforts by the State, led by DLNR, have resulted in the release of the PLTIS. This effort is on-going and should be continued and expanded, with a renewed commitment by State agencies to provide the information necessary to determine the true contours of the public trust. Only by having the most accurate possible information, can the State appropriately manage trust resources and comply with its fiduciary responsibilities to Native Hawaiians and the general public.

Another issue that confronts decisionmakers relates to the transfer, alienation, and lease extensions of trust lands. As discussed above, transfer and alienation has been addressed by legislation that requires more notice and openness in the process. This may help to maintain the corpus of the trust lands and ensure that the lands will be a resource for Native Hawaiians and the general public into the future. Thus, it is vital that all decisionmakers truly understand their kuleana in making sure that any proposed transfer of the trust lands follows the procedures set out in the law. Moreover, with the new law allowing lease extensions of up to 40-years, decisionmakers should closely examine whether the detrimental impact on the Native Hawaiian community that results from extending leases on trust lands outweighs any potential benefit.

Finally, as the Hawai'i Supreme Court recently made clear, the State's trust responsibilities include the duty, even when trust lands are leased to others, to monitor and ensure that the trust lands are being protected and preserved. Act 93 is a starting point with regard to federal military use of trust lands and the act should be fully implemented to give the best possible information to Hawai'i's decisionmakers.

‘Āina is essential to the life of the Native Hawaiian community. As Hawaiian scholar and Kumu Hula, Pualani Kanaka‘ole Kanahele, has stated, “[W]e need land to live on. That is -- that is our foundation. And for the native Hawaiian, more than the family, land is their foundation. Land is their identity.”⁴⁵ The State has committed itself to reconciliation with the Native Hawaiian people. Indeed, the Hawai'i Supreme Court recognized that “[a] lasting reconciliation [is] desired by all people of Hawai'i.”⁴⁶ To fulfill this reconciliation commitment, however, decisionmakers must understand their kuleana and responsibilities in relation to the public land trust and must discharge their duties according to the high standards required of a trustee.

¹ Office of Hawaiian Affairs v. Housing Community and Development Corporation of Hawai'i, 117 Hawai'i 174, 195, 177 P.3d 884, 905 (2008) (OHA v. HCDCH) (*citing* Ahuna v. Hawn. Homes Commn., 64 Haw. 327, 339, 640 P.2d 1161, 1169 (1981)).

² Joint Resolution of Annexation, July 7, 1898, 30 Stat. 750 (1898).

³ Hawaiian Homes Commission Act of 1921, Pub. L. No. 34, 42 Stat. 108 (1921) (HHCA). The HHCA is set out in full as amended in 1 HAW. REV. STAT.

⁴ *Id.* §§ 203, 207, 208. HHCA § 208 (2) allows the extension of the initial ninety-nine-year period, for a total of one hundred and ninety-nine years.

⁵ *Id.* § 201(a). Under HHCA § 209(a), some homestead successors may be of not less than twenty-five percent Hawaiian ancestry. A recent state law lowered the blood quantum for homestead successors to not less than one-thirty-second percent Hawaiian ancestry. Act 80, 2017 Hawai'i Sess. Laws. This amendment, however, requires congressional approval. Admission Act, Pub. L. No. 86-3, § 4, 73 Stat. 4, 5 (1959) (hereinafter Admission Act).

⁶ In late 1963, Congress passed a law allowing the federal government to transfer lands it had retained in 1959 to the State, with the exception of lands in national parks, monuments, and certain reservations. Lands transferred to the State are subject to the trust terms of section 5(f) of the Admission Act. Act of Dec. 23, 1963, Pub. L. No. 88-233, 77 Stat. 472.

⁷ A 1969 Legislative Reference Bureau (LRB) study gives a total figure of 30,176.185 acres. ROBERT H. HORWITZ ET AL., PUBLIC LAND POLICY IN HAWAII: AN HISTORICAL ANALYSIS, Leg. Ref. Bureau Rept. No. 5, at 75-76 (1969). More recent studies indicate a figure closer to 29,448.585 for just the 'āina listed in the LRB report, but

also suggests that there are other ‘āina under long-term leases that were not included in the 1969 LRB report. *See*, U.S. INDO-PACIFIC COMMAND, HAWAII MILITARY LAND USE MASTER PLAN, at 8-9 (April 2021), giving a total figure of 37,540.49 acres under lease to the U.S. military.

⁸ Admission Act, § 5(b). As set out in sections 5(c), 5(d), and 5(e), other lands were retained by the U.S. or were eligible to be retained by the U.S.

⁹ Admission Act, § 5(f) (emphasis added).

¹⁰ HAW. CONST., art. XII § 4 (1978).

¹¹ HAW. CONST., art. XII § 5 (1978).

¹² HAW. CONST., art. XII § 6 (1978).

¹³ HAW. CONST., art. XVI § 7. This section was amended in 1978 to add the final sentence stating that, “[s]uch legislation shall not diminish or limit the benefits of native Hawaiians under Section 4 of Article XII.” *But see* Kahalekai v. Doi, 590 P.2d 543, 556–57 (1979) (explaining that this amendment may be one of those not validly ratified by the electorate).

¹⁴ Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 175, 737 P.2d 446, 458 (1987).

¹⁵ Act 304, 1990 Haw. Sess. Laws 947.

¹⁶ Office of Hawaiian Affairs v. State, 96 Hawai‘i 388, 31 P.3d 901 (2001).

¹⁷ *Id.* at 401, 31 P.3d at 914.

¹⁸ Act 178, 2006 Haw. Sess. Laws 702.

¹⁹ Gov. Exec. Ord. No. 06-06 (Sept. 20, 2006).

²⁰ Act 15, 2012 Haw. Sess. Laws 24.

²¹ *See, e.g.*, S.B. 1334 and H.B. 1267, Relating to the Hawaii Community Development Authority (2021), which would have allowed the raising of the building height limit for two of OHA’s six Kaka‘ako Makai parcels to four-hundred feet and lifted current restriction against residential development; HB1264, Relating to Hawaii Community Development Authority (2021), which would have allowed construction of hotels in the Kaka‘ako Community Development District. *See also* H.R. 111, H.D. 1 (2021), which convenes a working group to discuss future development in Kaka‘ako Makai.

²² S.B. 2021, S.D. 1, H.D. 2, C.D. 1 (2022 Haw. Leg. Sess.).

²³ LEGISLATIVE AUDITOR, FINAL REPORT ON THE PUBLIC LAND TRUST 29 (Audit Report No. 86-17, 1986).

²⁴ *Id.* at 17–18, 36–41.

²⁵ Act 121, 1982 Haw. Sess. Laws 180.

²⁶ Act 329, 1997 Haw. Sess. Laws 956.

²⁷ DEP’T OF LAND & NATURAL RES., REPORT TO THE TWENTY-FIRST LEGISLATURE, REGULAR SESSION OF 2001, ON THE PROGRESS TOWARDS THE COMPLETION OF THE STATE LAND INFORMATION MANAGEMENT SYSTEM 1 (Nov. 2000).

²⁸ Act 54, 2011 Haw. Sess. Laws 131.

²⁹ *About* section of the PUBLIC LAND TRUST INFORMATION SYSTEM, <https://pltis.hawaii.gov> (last visited June 15, 2022).

³⁰ *Id.*

³¹ Napeahi v. Paty, 987 F. Supp. 1288 (D. Haw. 1996).

³² P.L. 103-150, 107 Stat. 1510 (Nov. 23, 1993).

³³ OHA v. HCDCH, 117 Hawai‘i 174, 177 P.3d 884 (2008).

³⁴ *Id.* at 213, 177 P.3d at 213.

³⁵ Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163 (2009).

³⁶ Act 176, 2009 Haw. Sess. Laws 705; Act 169, 2011 Haw. Sess. Laws 579 (codified at HRS §§ 171-50(c), 171-64.7).

³⁷ Act 146, 2014 Haw. Sess. Laws 559 (codified at HRS § 171-50(c)).

³⁸ Act 236 (2021).

³⁹ Ching v. Case, 45 Hawai‘i 148, 449 P.3d 1146 (2019).

⁴⁰ *Id.* at 152, 449 P.3d at 1150.

⁴¹ *Id.* at 177-78, 499 P.3d at 1156-57 (*citing* HAW. CONST., art. XI § 1 (1978)).

⁴² *Ching*, 45 Hawai‘i at 152, 449 P.3d at 1150

⁴³ OHA v. HCDCH, 171 Hawai‘i 174, 194, 177 P.3d 884, 904 (2008).

⁴⁴ Act 093 (2021). Although Act 93 required that the report be filed 20 days prior to the convening of the 2022 Legislative Session, testimony from one official at the Office of Planning & Sustainable Development indicates that as of March 22, 2022, the agency was still gathering information for the report. Testimony of Mary Alice Evans on S.B. 2581, S.D. 1, H.D. 1, Relating to Affordable Housing, Before the House Comm. on Water & Land (Mar. 22, 2022).

⁴⁵ *OHA v. HCDCH*, *supra* note 43, at 215, 177 P.3d at 925.

⁴⁶ *Id.* at 216, 177 P.3d at 926.